No. 275. 63

Brf. of Bright for P. & E.

Office Supreme Court U.S.
FILED
MAR 25 1902
JAMES H. McKENNEY,
Clerk.

Supreme Court of the United States.

No. 275.

Filed Mar. 25, 1902.

EDMUND H. CHADWICK, PLAINTIFF IN ERROR.

versus

JOHN M. KELLEY, DEFENDANT IN ERROR.

IN ERROR TO THE SUPREME COURT OF THE STATE OF LOUISIANA.

Brief for the Plaintiff in Error.

GEO. L. BRIGHT,
Counsel for E. H. Chadwick, Plaintiff in Error.

The L. Graham Co., Ltd., New Orleans.

Supreme Court of the United States.

No. 275.

EDMUND H. CHADWICK, PLAINTIFF IN ERROR.

versus

JOHN M. KELLEY, DEFENDANT IN ERROR.

IN ERROR TO THE SUPREME COURT OF THE STATE OF LOUISIANA.

Brief for the Plaintiff in Error.

SYLLABUS.

An ordinance of the Council of the City of New Orleans which provides that in all contracts let by the City of New Orleans for public works, of every kind and nature, the contractor shall not employ any other but *bona fide* resident citizens of the City of New Orleans as laborers on such public work, is violative of the XIV Amendment of the Constitution of the United States.

The statute of Louisiana and the ordinances of the City

of New Orleans which condemn a property owner to pay for the paving of a street in front of his property irrespective as to whether he is benefited or not by the paving—when he is not benefited by paving, but seriously damaged thereby—which imposes on him a personal liability largely exceeding the value of the property it violates the Constitution of the United States, Article V.

STATEMENT.

John M. Kelley is the transferee of A. J. Christopher. He alleges in his petition that Christopher made a contract with the City of New Orleans, the City being authorized to contract by ordinance 12,136, to pave Hagan avenue from Canal to Esplanade street; that the paving was done in accordance with Section 37 of Act No. 20 of 1882, of Louisiana, entitled an act to incorporate the City of New Orleans, amended by Act No. 119 of 1886, amended by Act No. 142 of 1894—and was done by virtue of Ordinances Nos. 11,184, 11,849, 12,136 and other laws and ordinances on the same subject matter and in force at the time. He alleges that Edmund H. Chadwick was the front proprietor of 307 ft. 2 in. lineal feet, on Hagan avenue, being the whole square of ground, and is consequently *personally* liable to him for three-fourths of the contract price of paving in front of his property. He prays for a personal judgment against Chadwick for $638.80 with recognition of a lien and privilege on the whole square of ground. R., pp. 1, 2, 3.

Chadwick answered, p. 9, but as this answer does not present the issue for the writ of error, we need not recite it.

Chadwick subsequently filed an amended and supplemental answer, R., p. 35, and we recite only such parts of the answer as will be considered under the writ of error. He alleged that the ordinance is unconstitutional and illegal, because the ordinance and specifications require the contractor *to employ only bona fide resident citizens of the city of New Orleans as laborers on the work*, and deprives the citizens of this State (Louisiana) and of each and every State, and the inhabitants thereof, of their privileges and immunities of citizens in the several States, secured to them by the Constitution of the United States, Article IV, Sec. 2, which provides the citizens of each State, shall be entitled to all privileges and immunities of the citizens of the several States. R., p. 35.

The plaintiff Kelley filed a supplemental petition, p. 36, which we need not recite for the purpose of the present writ of error. He filed another supplemental petition, p. 39, which we need not recite for the present writ of error.

Whereupon the defendant Chadwick filed an answer with a view of obtaining a writ of error to this Court, should the State court decide against him, p. 40.

First. He alleged that the ordinances of the City of New Orleans are illegal and unconstitutional because they require the contractor to employ only *bona fide* resident citizens of the City of New Orleans as laborers on the work and is therefore contrary to the Constitution of the State of Louisiana and to *Article IV, Sec. 2 of the Constitution of the United States* which provides *Section 2. The citizens of each State shall be entitled to all privileges and immunities of citizens of the several States and to the XIV amendment of the Constitution of the United States which provides Article XIV, Sec. 1: All persons, born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of*

the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges and immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the law. R., p. 40.

Second. And the defendant alleged that the paving of the street in front of his property has been of no benefit to it, on the contrary has damaged it, and the rendition of a judgment against him is taking his private property for public purposes and is contrary to the Constitution of the United States, Article V, which provides that no person shall "be deprived of life, liberty or property without due process of law; nor shall private property be taken for public use without just compensation."

The cause was tried before the State District Court and the court rendered a personal judgment against the defendant Chadwick for the amount claimed "$638.80 with 6 per cent interest thereon from September 24, 1896, until paid and all costs of suit; the whole with recognition of plaintiff's lien and privilege for the payment thereof, on the following described property: five certain lots of ground situated in this city in the square bounded by Hagan avenue, Toulouse, Rendon streets and Carondelet walk and Hagan avenue, with a depth and front on Carondelet walk of 31 feet and a depth and front on Hagan avenue of 100 feet between parallel lines. Lots 2, 3 and 4 adjoining lot No. 1 and having a frontage respectively of 35 feet 8 inches and 6 lines, 35 feet 8 inches 7 lines and 35 feet 8 inches 7 lines, or a combined frontage of 107 feet 2 inches on Hagan avenue and each with a width of 154 feet 8 inches between parallel lines, and lot No. 5, adjoining said lots last described and having a frontage and depth on Hagan

avenue of 100 feet and a front on Toulouse street, of which it forms a corner of 31 feet between parallel lines and on the proceeds thereof, the said property to be sold and the proceeds applied to the payment of the plaintiff's claim as here adjudged." R., pp. 49, 50.

A sketch of these lots is on page 13, R.

From this judgment the defendant appealed to the Supreme Court of the State of Louisiana, p. 50. The Supreme Court affirmed the judgment, p. 57-66.

A writ of error issued to the Supreme Court of Louisiana returnable to this Court, p. 70-71.

The errors assigned R. p. 72 are:

First. That the Court erred in holding that the statutes of the General Assembly of the State of Louisiana, known as Act No. 73 of 1876, and Act No. 20 of 1882 specially Section 37 thereof and Act No. 119 of 1886 and Act No. 142 of 1894 and the ordinances of the City of New Orleans known as Nos. 11,184, 11,849, and 12,136, under the authority of which plaintiff claims and seeks to recover are not violative of the Constitution of the United States, particularly of Article V, and Article XIV Section 1 of the amendments thereof, and that the pleas and defenses urged by defendant of these Articles of the Constitution are not complete and perfect defenses against the claim of the plaintiff.

Second. The Court erred in deciding that the question whether or not the property owned was benefited by the paving or improvement was not a question of evidence, a fact to be determined by the Court, and erred in deciding that the common council by ordinance, having ordered the paving or improvement, conclusively determined the question of improvement and benefit, and the Court erred in not finding that the defendant could not be made to pay the cost of the pavement, whether he was benefited or not to the extent of such cost—in not finding that the statutes of the State

and the ordinances of the City of New Orleans were illegal and violative of the Constitution of the United States because they excluded the consideration of benefit. R., p. 72.

BRIEF AND AUTHORITIES.

First. The ordinance and the contract made in pursuance thereof require the contractor to employ only *bona fide* resident citizens of the City of New Orleans as laborers on the work and is contrary to the Constitution of the United States, Article IV, Sec. 2 of the Constitution of the United States which provides: Section 2. The citizens of each State shall be entitled to all privileges and immunities of citizens in the several States. The XIV amendment of the Constitution of the United States provides: Article XIV, Sec. 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.

The ordinance is:

Mayoralty of New Orléans,
City Hall, March 26, 1895.

NO. 10,486, COUNCIL SERIES.

AN ORDINANCE relative to the employment of resident labor by public contractors:

SECTION 1. BE IT ORDAINED by the Common Council of the City of New Orleans, That hereafter in

all contracts let by the City of New Orleans, for public works, of every kind and nature, there shall be written into the said contracts, as one of the conditions and specifications thereof, that no public contractor on any public work within the City of New Orleans, who has obtained such contract from the City of New Orleans, shall employ any other but *bona fide* resident citizens of the City of New Orleans as laborers on such public work, under his contract.

SEC. 2. Be it further ordained, etc., That it shall also be considered a condition of each and every public contractor mentioned in Section 1, that the contractor shall pay as liquidated damages, for each and every person employed in violation of the provisions of Section 1, a penalty of Twenty-five Dollars ($25.00) to be recovered before any court of competent jurisdiction, for the benefit of the Charity Hospital, and that either the City of New Orleans, or the Board of Administrators of the Charity Hospital shall have authority to sue for and recover these penalties.

SEC. 3. Be it further ordained, etc., That the bond to be given by the contractor, as security for the execution of said contracts, shall be held and deemed to cover liability on the part of the surety for all of the penalties incurred by the contractor in violation of these conditions of his contract.

SEC. 4. Be it further ordained, etc., That all public officials charged with the preparation of specifications of contracts for public work are directed to write the above conditions in all such specifications, and the City Notary is specially charged with the duty of seeing that the conditions in said Sections 1, 2 and 3 of this ordinance shall be written into and made part of every notarial contract for any public work let out by the City of New Orleans.

Adopted by the Council of the City of New Orleans, March 19th, 1895.

DAN A. ROSE,
Clerk of Council.

Approved March 26, 1895.

JOHN FITZPATRICK,
Mayor.

A true copy:

CLARK STEEN,
Secretary to the Mayor.

The contract R., p. 4, which is made a part of the petition, R., p. 2, states, the ordinance provided as follows:

"It is agreed and understood that the provisions and requirements of Ordinance No. 10,486 Council series, are made part of the specifications of this contract and accordingly said contractor and assigns *is and are hereby bound and obligated to employ only bona fide resident citizens of the City of New Orleans as laborers on the work provided for in this contract.*"

The contract R., p. 8, says:

"Now the condition of the foregoing bond or obligation is such that if the said A. J. Christopher, contractor, shall well, truly and faithfully do and perform all and singular the requirements, the requirements of the foregoing contract strictly in accordance with the specifications and to the satisfaction of the City Council of the City of New Orleans, then the above-written bond or obligation shall be null and void, and of no effect, but otherwise to be and remain in full force and virtue." R., p. 8.

1. Constitution United States IV, Sec. 2 reads: "The citizens of each State shall be entitled to all privileges and immunities of citizens of the several States."

Amendment, Art. XIV, Sec. 1: "All persons born or naturalized in the United States and subject to the jurisdiction thereof are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws."

The ordinance deprives every person not a *bona fide* resident citizen of the City of New Orleans the right to labor on the contemplated improvements; it deprives him of the right to labor and live—none but resident citizens of the City of New Orleans who are qualified voters and therefore electors of ward politicians to office in New Orleans have any right to work for a living. A citizen of another State is excluded—so are foreign born persons not naturalized.

That such an ordinance is illegal and violative of the Constitution of the State and especially of the United States has been frequently decided.

The protection extends to foreign-born unnaturalized citizens. Jaunita Limestone Co. vs. Fagley, 40 A. 977; 187 Pa. St. 193; 42 Weekly Notes of Cases 537; 42 Lawyers' Reports Annotated 142; Barbier vs. Connelly, 113 U. S. 27; Vick Wo vs. Hopkins, 118 U. S. 356; Fraser vs. McConway & T. Co., 6 Pa. Dist., p. 353.

In *Blake vs. McClung*, 20 S. Ct. 307, 176 U. S. 59, it was decided, giving priority to creditors residing in the State over those who reside out of the State, in distributing the assets of an insolvent corporation is a violation of Constitution of United States, Art. 4, providing for equal privileges and immunities of citizens in the several States.

In *Fiske vs. People ex rel. Raymond*, (Ill.) 52 L. R. A. 287 Ordinances requiring union labor only on city

contracts, and that laborers shall not work more than 8 hours per day are held unconstitutional.

In *Juanita Limestone Co. vs. Fagley*, 40 A. 977; 187 Pa. St. 193; 42 Weekly Notes of cases 537; 42 Lawyers' Rep. Annotated 442, it was decided, Act June 15, 1897, regulating the employment of foreign-born persons, contravenes the 14th Amendment of the federal constitution, declaring that no State shall deny to any person within its jurisdiction the equal protection of its laws. The act provided that all persons employing foreign-born citizens, unnaturalized male persons over 21 years of age within this commonwealth shall be and are hereby taxed at the rate of 3 cents per day for each person so employed; and further provided, that the tax might be deducted from the wages of the employee.

July 21, 1898, The Supreme Court of Pennsylvania decided that this statute offends against the 14th Amendment of the Constitution of the United States. See also Barbier vs. Connelly, 113 U. S. 27; Vick Wo vs. Hopkins, 118 U. S. 356; Fraser vs. McConway & T. Co., 6 Pa. Dist. R. 353.

In *Shirk vs. City of Lafayette* 52 Fed. Rep. 857, it was decided, the Revised Statutes Ind., 2988 which provides: "that it will be unlawful for any person, association or corporation to appoint a non-resident, a trustee in a deed, mortgage or other instrument in writing, except wills, for any purpose whatever" is in conflict with Constitution U. S., Art. 4, Sec. 2, which provides that citizens of each State shall be entitled to all the privileges and immunities of citizens of the several States.

In *Steed vs. Harvey* 54 P. 1011. It was held: that the Constitution of U. S. Amendment 14th, Sec. 1, declaring no State "shall deny to any person within its jurisdiction the equal protection of the laws" secures to every person within the jurisdiction of a State, though not a citizen or even a resident, the protection of its laws.

equally with its own citizens, and entitles him to the same remedies. See also Hammond Beef & Provision Co. vs. Best, 91 Me. 431.

In *Apex Transportation Co. vs. Garbade*, 54 P. 367, it was held: that the Constitution of the U. S., Amendment 14, Sec. 1, declaring that no State shall make or enforce any law which shall deny to any person within its jurisdiction the equal protection of its laws, means that no person or class of persons shall be denied the same protection of the laws which is enjoyed by other persons or classes in the same place and under the same circumstances. See Brannon, 14th Amendment, p. 315.

Acts done under the authority of a statute embrace all ordinances of municipal corporations as well as acts of State Legislation. Simonten on Federal Courts, p. 79; 2 Peters 463; 93 U. S. 120.

This City ordinance which provides, none but resident citizens of the City of New Orleans shall be employed as laborers, on the work, is prejudicial to the property owner for the charter of the City of New Orleans, Act 1882, page 25, section 21, provides: "All contracts for public works or for materials or supplies ordered by the Council, shall be offered by the comptroller at public auction and given *to the lowest bidder* who can furnish security satisfactory to the Council, or the same shall at the discretion of the Council, be advertised for proposals to be delivered to the comptroller in writing, sealed and to be opened by said comptroller in presence of the Finance Committee of said Council and given to the person making *the lowest proposal* therefor who can furnish security satisfactory to the Council."

It is prejudicial to the property owner, for as you restrict the number of workmen you increase the price of the work.

Second. The laws of the State of Louisiana and the ordinances off the City of New Orleans which condemn a property owner to pay for the paving of a street irrespective as to whether he is benefited or not by the paving and authorizes a personal judgment against him when he is not benefited, but damaged by the paving is violative of the Constitution of the United States, are the following:

Act No. 119 of 1882, of the General Assembly of La.,

No. 119. AN ACT.

To amend an act entitled "an act to incorporate the City of New Orleans, provide for the government and administration of the affairs thereof; and to repeal all acts inconsistent and in conflict with its provisions" approved June 23, 1882, and to provide for paving and banqueting streets in the City of New Orleans.

Public notice having been given, in accordance with the requirements of Article 48 of the Constitution.

SECTION 1. *Be it enacted by the General Assembly of the State of Louisiana.* That Section 37 of Act No. 29 approved June 23, 1882, entitled "an act to incorporate the City of New Orleans, provides for the government and administration of the affairs thereof, and to repeal all acts inconsistent, and in conflict with its provisions" be amended and re-enacted to read as follows:

"The Council may, in its discretion, provide for the paving or banqueting of any street or portion thereof at the expense of the whole city, and may thereupon force, impose and collect on *paving*, of the front proprietors of lots fronting on said streets, a special assessment, in proportion to frontage of three-quarters of the cost of said improvement, and such local assessment shall have a first privilege, superior to vendor's privilege and all other privileges and mortgages. The

other one-fourth in addition to intersections, to be paid by the city, *on banqueting the whole cost to be collected from front proprietor; provided that a two-thirds* vote of the members of council is secured for said banqueting or paving; and whenever council shall deem it necessary to take such action, notice of said intention shall be published in the official journal, once a week for four weeeks, and such improvements shall be subject to the conditions already prescribed for improvement or repairs to be made, on compliance with the petition of property-holders and payment thereof, shall be assumed and collected in like manner."

These statutes of the State provide for the paving of a street at the expense of the property owner, irrespective of benefit or value of the property—rest on a basis that exclude any consideration of benefit or value—impose a personal liability on the owner in excess of the value of the property with lien and privilege on the property, and provide for no means of defense except such as may be urged before the court when the claim is made.

That the statutes of Louisiana, and the ordinances of the City of New Orleans, that provide that the Council may in its discretion provide for the paving of a street at the cost of the front proprietors, without taking special benefits into account and whether it was benefited or not is violative of the Constitution of the United States, that the statute on its face is unconstitutional because it rests upon a basis that excluded any consideration of benefits, was decided in favor of plaintiff in error in the case of Norwood vs. Baker, 172 U. S. R., p. 269, and if that decision had not been disturbed in French vs. Barber Asphalt Company decided April 29, 1901, we would be certain of what will be the decision in this case. We can add nothing to the dissenting opinion of three of the judges of the court.

But the facts in the French case are not exactly the facts in this case. The court after reciting the manner of proceeding to make the improvement says: "In this instance neither such a remonstrance nor petition was filed and the Common Council upon the recommendation of the Board of Public Works enacted an ordinance requiring the construction of the pavement." In this case, Chadwick objected, remonstrated, sent two or three petitions against the pavement to the board. R., p. 16.

The Court in its statement says: "Such lien can be enforced only by suit in a court of competent jurisdiction, against the owners of the land charged. No personal judgment was authorized to be rendered against the owner of the land. The right was expressly conferred on the owner of reducing the amount of the recovery by pleading and proving any mistake or error in the amount of the bill, or that the work was not done in a good and workmanlike manner."

By the law of Louisiana, and at issue in that case a personal judgment was rendered against Chadwick. A personal liability is alleged in the petition and a personal judgment prayed for. The judgment is: "It is ordered, adjudged and decreed, that there be judgment in favor of the plaintiff John Kelley and against the defendant Edmund H. Chadwick, for the sum of Six Hundred and Thirty-eight 80-100 dollars with six per cent. interest thereon from September 24th, 1896, until paid, and all costs of suit. The whole with recognition of plaintiff's lien and privilege for the payment thereof on the following described property: Five certain lots, etc., and on the proceeds thereof, the said property to be sold and the proceeds applied to the payment of the plaintiff's claim as herein adjudged." R., pp. 49, 50.

Act No. 73 of 1876, p. 116, Section 1, provides: "The

whole cost of said improvement, paving, etc., in front of the property fronting on said street or streets or portion thereof, shall be borne by the owner or owners of said property in equal proportions, according to the running foot on each side of the street or streets or portion thereof. The cost of paving or repairing, grading or regrading of intersections of streets shall be paid by the city."

This section was amended by Section 32 of Act No. 20 of 1882, but the personal liability of the owner of the property was preserved.

Act 20 of 1882, p. 30, Section 37 provides: "The Council may in its discretion provide for the paving or banqueting of any street or portion thereof at the expense of the whole city and may *thereupon force, impose, and collect of the front proprietor* of lots fronting on such streets, a specific local assessment in proportion to the frontage and not exceeding the increase in the value of the property, occasioned by the local improvement, and such local assessment shall have a first privilege superior to vendor's privilege and all other privileges and mortgages."

This section of the law of 1882 is constitutional, for the assessment must not exceed the increase of the value of the property, occasioned by the local improvement.

But this valid assessment is changed by the next law, Act 119 of 1886, Section 1. We have quoted the section to show that the law imposes a personal liability on the owner to the extent of the increased value of the property.

The next law, Act No. 119 of 1886, p. 119, imposes the assessment irrespective of the question of benefit and imposes on the owner a personal liability for the assessment irrespective of benefit, and provides the whole cost shall be borne by the property owner.

The Section reads: It amends Section 37 of Act No.

20 approved June 23, 1882, and re-enacts it so as to read as follows. Be it enacted, etc.: "That Section 57 of Act No. 20, approved June 23, 1882, entitled an act to incorporate the city of New Orleans, provides for the government and administration of the affairs thereof, and to repeal all acts inconsistent and in conflict with its provisions," be amended and re-enacted so as to read as follows: "The Council may in its discretion, provide for the paving or banqueting of any street, or portion thereof at the expense of the whole city, and may thereupon force, impose and collect, on paving of the front proprietors of lots fronting on said streets a special assesment, in proportion to frontage of three-quarters of the cost of said improvement, and such local assessment shall have a first privilege, superior to vendor's privilege and all other privileges and mortgages. The other one-fourth, in addition to intersections, to be paid by the city. In banqueting the whole cost to be collected from front proprietors; *provided* that a two-third vote of the members of Council is secured, for said banqueting or paving; and whenever Council shall deem it necessary to take such action, notice of said intention shall be published in the official journal, once a week for four weeks, and such improvements shall be subject to the conditions already prescribed for improvement or repairs to be made, on compliance with the petition of property-holders and payment thereof shall be assumed and collected in like manner."

The Act of 1894, No. 142, page 179, amended Act No. 119, approved July 8, 1886, the previous act, and Section 1 reads: "The City Council of New Orleans may in its discretion, provide for the paving of any street, or portion thereof, at the expense of the whole city, and may thereupon force, impose and collect of the front proprietors of lots fronting on said street or streets, a special assessment in proportion to frontage of three-

quarters of the cost of said improvement and such local assessment shall 'have a first privilege, superior to vendor's lien and privilege, and over all other privileges.' The other one-fourth in addition to intersections are to be paid for by the City."

Section 2 provides: "Be it further enacted by the General Assembly, that the Council may in its discretion, provide for the paving of any banquette or sidewalk, the whole cost of which, as well as the intersections to be paid for by the front proprietors in proportion to the frontage owned by such, upon completion of the paving."

So far we have shown that by the statutes of the State of Louisiana that the property owner is made to pay the cost of the improvement irrespective of the question of benefit, is made personally responsible for the cost of the improvement although it may largely exceed not only the benefit to his property, but the value thereof, and his property is made subject to a lien, privilege and mortgage to secure the payment.

Such statutes and the ordinances in furtherance of them are unconstitutional, violate Article XIV Amendments which provide "nor shall any State deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws."

It was so decided in Norwood vs. Baker, 172 U. S., R., p. 270, and if that decision had not been disturbed, by the decision made in French vs. Barber Asphalt Company, decided April, 29, 1901, we might submit this case without further argument. The dissenting opinion in that case presents every argument that can be presented in support of this case.

There are differences, however, between the Norwood case and this case, which entitle us to relief.

In the French case the Court said "no remonstrance

was made by the property owner against the improvement." In this case the remonstrance was made. See evidence of Chadwick, R., p. 16.

In the French case the Court said: "It may be conceded that Courts of equity are always open to afford a remedy where there is an attempt, under the guise of legal proceedings, to deprive a person of his life, liberty or proerty, without due process of law. And such, in the opinion of a majority of the judges of this Court, was the nature and effect of the proceedings in the case of Norwood vs. Baker."

In Louisiana we have no separate law and equity practice—all defenses may be pleaded in an action. We submit that this case is one for the Court to afford a remedy. The lots in question were bought by the defendant Chadwick for $8.30 apiece, R., p. 14. They are two feet below the sea level, R., p. 14—the curbing of the street is 2 1-2 feet above the surface of the lots. It would cost $1615 to fill them to the city grade, pp. 14, 15, 20. The defendant has tried ineffectually to sell the whole square for $500, R., p. 14. It is not worth anything because it is always almost covered with water, R., p. 17. The cost of filling would be more than the value of the lots, R., p. 17. It would cost $4,500 to fill the whole square, $1615 to fill the 5 lots. The result is the plaintiff bought the 5 lots for $8.30 apiece, $41.50. After the paving he ineffectually tried to sell them for $20 a lot, p. 14. The suit against him for paving in front of these 5 lots is for $638.80, and judgment for that amount was rendered against him with lien and privilege on the lots. We submit that this is not only taking private property for public use without just compensation, but besides making a property owner after his property has been taken from him, pay much more than the value of his property. It is taking his other property to pay for the pretended im-

provement. Can a Legislature do this in the face of the Constitution of the United States which says "nor shall private property be taken for public use without just compensation?"

In the case of Town of Tonawanda vs. Patton, decided by this Court April 29, 1891, 181 U. S., the Court said: "The case of Norwood vs. Baker presented as the judge in the Court in the present case well said 'considerations of peculiar and extraordinary hardships' amounting in the opinion of a majority of the judges of this Court to actual confiscation of private property for public use and bringing the case fairly within the reach of the 14th Amendment."

The law then is, that when case of peculiar and extraordinary hardships is presented, amounting to actual confiscation, the principles established in the Norwood case will be enforced. The case now before the Court presents not only a case of hardship and confiscation, but the defendant is made personally responsible for much more than the value of his lots. He bought the 5 lots for $8.30 apiece, R., p. 14. They are 2 1-2 feet below sea level. It would require $1615, R., p. 15 to fill the five lots to city grade. He offered to sell not only the five lots, but the whole square for $500, R., p. 16. Now he is condemned to pay $638.80 for paving in front of five lots that cost $41.50. In Meyer vs. City of Covington, 45 S. W. 769 it was decided: a statute authorizing a personal judgment against the owner of abutting property for the amount assessed against his property for the costs of widening a street is unconstitutional.

We pray that the judgment of the Civil District Court for the parish, affirmed by the Supreme Court of the State of Louisiana be reversed, and that the case be remanded with directions to dismiss the suit.

Respectfully submitted,

GEO. L. BRIGHT,

Counsel for E. H. Chadwick, Plaintiff in Error.